

## § 30.40

the National Housing Act, or a provider of assistance to the borrower in connection with any such mortgage or loan, including:

- (1) Sellers;
- (2) Borrowers;
- (3) Closing agents;
- (4) Title companies;
- (5) Real estate agents;
- (6) Mortgage brokers;
- (7) Appraisers;
- (8) Loan correspondents;
- (9) Dealers;
- (10) Consultants;
- (11) Contractors;
- (12) Subcontractors; and
- (13) Inspectors.

(b) *Knowing and material violations.* The Assistant Secretary for Housing-Federal Housing Commissioner or his/her designee may impose a civil penalty on any person or entity identified in paragraph (a) of this section who knowingly and materially:

(1) Submits false information to the Secretary in connection with any mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*), or any loan that is covered by a contract of insurance under title I of the National Housing Act;

(2) Falsely certifies to the Secretary or submits a false certification by another person or entity to the Secretary in connection with any mortgage insured under the National Housing Act or any loan that is covered by a contract of insurance under title I of the National Housing Act; or

(3) Is a loan dealer or correspondent and fails to submit to the Secretary information which is required by regulations or directives in connection with any loan that is covered by a contract of insurance under title I of the National Housing Act.

(c) *Amount of penalty.* The maximum penalty is \$5,500 for each violation, up to a limit of \$1,100,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

[65 FR 9087, Feb. 23, 2000]

## § 30.40 Loan guarantees for Indian housing.

(a) *General.* The Assistant Secretary for Public and Indian Housing (or his/

## 24 CFR Subtitle A (4-1-04 Edition)

her designee) may initiate a civil money penalty action against any mortgagee or holder of a guarantee certificate who knowingly and materially violates the provisions of 12 U.S.C. 1715z-13a(g)(2) concerning loan guarantees for Indian housing.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is \$6,000 for each violation, up to a limit of \$1,250,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

[61 FR 50215, Sept. 24, 1996, as amended at 65 FR 9087, Feb. 23, 2000; 68 FR 12788, Mar. 17, 2003]

## § 30.45 Multifamily and section 202 or 811 mortgagors.

(a) *Definitions.* The following definitions apply to this section only:

(1) *Agent employed to manage the property that has an identity of interest and identity of interest agent.* An entity:

(i) That has management responsibility for a project;

(ii) In which the ownership entity, including its general partner or partners (if applicable) and its officers or directors (if applicable), has an ownership interest; and

(iii) Over which the ownership entity exerts effective control.

(2) *Effective control.* The ability to direct, alter, supervise, or otherwise influence the actions, policies, decisions, duties, employment, or personnel of the management agent.

(3) *Entity.* An individual corporation; company; association; partnership; authority; firm; society; trust; state, local government or agency thereof; or any other organization or group of people.

(4) *Multifamily property.* Property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to the National Housing Act (12 U.S.C. 1702 *et seq.*).

(5) *Ownership interest.* Any direct or indirect interest in the stock, partnership interests, beneficial interests (for

a trust) or other medium of equity participation. An indirect interest includes equity participation in any entity that holds a management interest (e.g. general partner, managing member of an LLC, majority stockholder, trustee) or minimum equity interest (e.g., a 25% or more limited partner, 10% or more stockholder) in the ownership entity of the management agent.

(6) *Section 202 or 811 property.* Property that includes 5 or more living units and that has a mortgage held pursuant to a direct loan or capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) or capital advances under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).

(b) *Violation of agreement*—(1) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against a mortgagor of a section 202 or 811 property or a mortgagor, general partner of a partnership mortgagor, or any officer or director of a corporate mortgagor of a multifamily property who:

(i) Has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities; and

(ii) Knowingly and materially fails to comply with any of the commitments listed in paragraph (b)(1)(i) of this section.

(2) *Maximum penalty.* The maximum penalty for each violation under paragraph (b) of this section is the amount of loss that the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

(c) *Other violations.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any of the following who knowingly and materially take any of

the actions listed in 12 U.S.C. 1735f-15(c)(1)(B):

(1) Any mortgagor of a multifamily property;

(2) Any general partner of a partnership mortgagor of such property;

(3) Any officer or director of a corporate mortgagor;

(4) Any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor, or with any officer or director of a corporate mortgagor of such property; or

(5) Any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor.

(d) *Acceptable management.* For purposes of this rule, “management acceptable to the Secretary” under 12 U.S.C. 1735f-15(c)(1)(B)(xiv) shall include:

(1) Proper fiscal management;

(2) Proper handling of vacancies and tenancing in accordance with HUD regulations;

(3) Appropriate handling of rent collection;

(4) Proper maintenance;

(5) Compliance with HUD regulations on tenant organization; and

(6) Any other matters that pertain to proper management.

(e) *Civil money penalty.* A consistent pattern of violations of HUD program requirements, or a single violation that causes serious injury to the public or tenants, can be a basis for an action to assess a civil money penalty.

(f) *Section 202 or 811 projects.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any mortgagor of a section 202 or 811 property who knowingly and materially takes any of the actions listed in 12 U.S.C. 1701q-1(c)(1).

(g) *Maximum penalty.* The maximum penalty for each violation under paragraph (c) of this section is \$32,500.

(h) *Payment of penalty.* No payment of a civil money penalty levied under this section shall be payable out of project income.

## § 30.50

(i) *Exceptions.* The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.

[66 FR 63441, Dec. 6, 2001, as amended at 68 FR 12788, Mar. 17, 2003]

## § 30.50 GNMA issuers and custodians.

(a) *General.* The President of GNMA, or his or her designee, may initiate a civil money penalty action against a GNMA issuer or custodian that knowingly and materially violates any provision of 12 U.S.C. 1723i(b), title III of the National Housing Act, or any implementing regulation, handbook, guaranty agreement, or contractual agreement, or participant letter issued by GNMA, or fails to comply with the terms of a settlement agreement with GNMA.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is \$6,500 for each violation, up to a limit of \$1,250,000 during any one-year period. Each violation shall constitute a separate violation with respect to each pool of mortgages.

[61 FR 50215, Sept. 24, 1996, as amended at 68 FR 12788, Mar. 17, 2003]

## § 30.55 Interstate Land Sales violations.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any person who knowingly and materially violates any provision of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.); the rules and regulations set forth at 24 CFR parts 1710, 1715, and 1720; or any order issued thereunder.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is \$1,100 for each violation, up to a limit for any particular person of \$1,250,000 during any one-year period. Each violation shall constitute a separate

## 24 CFR Subtitle A (4-1-04 Edition)

rate violation as to each sale or lease or offer to sell or lease.

[61 FR 50215, Sept. 24, 1996, as amended at 68 FR 12788, Mar. 17, 2003]

## § 30.60 Dealers or loan correspondents.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any dealer or loan correspondent who violates section 2(b)(7) of the National Housing Act (12 U.S.C. 1703). Such violations include, but are not limited to:

(1) Falsifying information on an application for dealer approval or re-approval submitted to a lender;

(2) Falsifying statements on a HUD credit application, improvement contract, note, security instrument, completion certificate, or other loan document;

(3) Failing to sign a credit application if the dealer or loan correspondent assisted the borrower in completing the application;

(4) Falsely certifying to a lender that the loan proceeds have been or will be spent on eligible improvements;

(5) Falsely certifying to a lender that the property improvements have been completed;

(6) Falsely certifying that a borrower has not been given or promised any cash payment, rebate, cash bonus, or anything of more than nominal value as an inducement to enter into a loan transaction;

(7) Making a false representation to a lender with respect to the creditworthiness of a borrower or the eligibility of the improvements for which a loan is sought.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is \$6,500 for each violation, up to a limit for any particular person of \$1,250,000 during any one-year period.

[61 FR 50215, Sept. 24, 1996, as amended at 68 FR 12788, Mar. 17, 2003]

## § 30.65 Failure to disclose lead-based paint hazards.

(a) *General.* The Director of the Office of Healthy Homes and Lead Hazard Control, or his or her designee, may